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No. 10-177

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

LISA MILLER,

Petitioner,

—v.—

JANET JENKINS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE VIRGINIA SUPREME COURT

BRIEF IN OPPOSITION

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COUNTER-QUESTIONS PRESENTED

1. Whether any federal issue is presented for review by this Court when the Virginia courts have repeatedly held the issues raised in the Petition to be barred by the law of the case doctrine.

2. Assuming the issue to be properly preserved, whether the States are bound by the Parental Kidnapping Prevention Act's mandate that they "shall enforce" the custody and visitation determinations of other States.

3. Whether the Court should grant review when the Petitioner's action of holding herself and the parties' child in hiding away from the authorities prevents this Court from enforcing any orders it may issue.

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INTRODUCTION

This is the ***fifth*** petition for *certiorari* that counsel for Petitioner Lisa Miller ("Petitioner" or "Lisa") has filed in this litigation, a custody dispute that was decided definitively almost four years ago when Petitioner failed to properly appeal from the Virginia Court of Appeals decision in *Miller-Jenkins v. Miller-Jenkins*, 637 S.E.2d 330 (Va. Ct. App. 2006) (App. 52a) (hereafter, *Miller-Jenkins I*).[1] In that opinion, the Virginia Court of Appeals held that: (1) under the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. § 1738A, Vermont, not Virginia, has jurisdiction over this dispute; (2) any Virginia laws purporting to deny recognition to out-of-state custody and visitation orders between same-sex couples are preempted by the PKPA; (3) the Defense of Marriage Act (DOMA), 28 U.S.C. § 1738C, does not modify Virginia's obligations under the PKPA; and (4) Virginia courts must give full faith and credit to Vermont's rulings in this case. App. 60a-70a.

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[1] For ease of reference, Respondent Janet Jenkins ("Respondent" or "Janet") refers to the other major decisions below as follows: *Miller-Jenkins II* is the opinion of the Virginia Supreme Court on appeal from a Virginia Court of Appeals decision subsequent *to Miller-Jenkins I* requiring registration of orders issued in the Vermont custody case initiated by Petitioner. In *Miller Jenkins II*, the Virginia Supreme Court held that the law of the case doctrine barred Petitioner from re-litigating any of the issues raised in *Miller-Jenkins I* (App. 26a). *Miller-Jenkins III* is the February 23, 2010 Virginia Court of Appeals opinion appealed from in this case, in which that court held that the law of the case doctrine barred further consideration of whether Virginia courts should enforce Vermont orders relating to the custody dispute between Petitioner and Respondent (App. 5a).

As noted above, Petitioner failed to properly appeal *Miller-Jenkins I*, and subsequent Virginia Court of Appeals and Virginia Supreme Court decisions have made clear that she has forfeited her right to argue these and other issues that were decided in that appeal. Nonetheless, Petitioner has spent the past four years trying to get the Virginia courts and this Court to reconsider those issues. In the meantime, she consistently has flouted court orders and repeatedly has been held in contempt in both Vermont and Virginia. After the Vermont court ordered a change of custody from the Petitioner to the Respondent, Petitioner defied the order and absconded with the parties' daughter. She has not been heard from since, raising serious questions about the legitimatcy of the petition purportedly filed on her behalf. More fundamentally, her flight and secreting of herself and the parties' daughter would disentitle her to review by this Court, even if this Court had jurisdiction over this appeal and it satisfied this Court's standards for certiorari – neither of which is the case.

JURISDICTIONAL STATEMENT

Petitioner states that the Court has jurisdiction pursuant to 28 U.S.C. § 1257(a), a provision that requires the assertion of a federal question. Because the case was decided below based on the law of the case, a state law doctrine, there is no federal question, and this Court does not have jurisdiction.

STATEMENT OF THE CASE

Petitioner's Statement of the Case contains the following omissions and mischaracterizations:[2]

1. When Petitioner initiated this litigation in Vermont in 2003 by filing a petition to dissolve her and Respondent's civil union, Petitioner not only "listed" the couple's child, Isabella (also referred to as "IMJ"), as a child of the civil union (Pet. at 4), but also "requested that the court award her custodial rights and award Janet [Respondent] parent-child contact" (App. 83a), thus expressly invoking the Vermont court's jurisdiction to resolve the parties' custody and visitation issues.

2. Lisa neglects to mention that the Vermont family court's conclusion that Janet is Isabella's legal parent was affirmed by the Vermont Supreme Court based on "many factors," including not only the parties' civil union but also because: "It was the expectation and intent of both Lisa and Janet that Janet would be IMJ's parent. Janet participated in the decision that Lisa would be artificially inseminated to bear a child and participated actively in the prenatal care and birth. Both Lisa and Janet treated Janet as IMJ's parent during the time they resided together, and Lisa identified Janet as a parent of IMJ in the dissolution petition. Finally, there is no other claimant to the status of parent, and, as a result, a negative decision would leave IMJ with only one parent." *Miller-*

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[2] The legal arguments included in Petitioner's Statement of the Case (Pet. at 2-3), are addressed in the Reasons for Denying the Writ, below.

Jenkins v. Miller-Jenkins, 912 A.2d 951, 956 (Vt. 2006) (App. 114a-115a).

3. In deciding that the Parental Kidnapping Prevention Act (PKPA) deprived Virginia of jurisdiction over the dispute, the *Miller-Jenkins I* court carefully analyzed the interaction between the PKPA and the Defense of Marriage Act (DOMA) and concluded that "[n]othing in the wording or the legislative history of DOMA indicates that it was designed to affect the PKPA and related custody and visitation determinations." App. 68a. The opinion further instructed the trial court "to extend full faith and credit to the custody and visitation orders of the Vermont court." App. 70a.

4. Lisa's attempt to appeal *Miller-Jenkins I* to the Virginia Supreme Court was dismissed because she failed to file a notice of appeal. App. 30a. Lisa sought a writ of *certiorari* from this Court, which was denied. *Miller-Jenkins v. Miller-Jenkins*, 128 S. Ct. 1127 (2008).

5. Petitioner asserts that, in the appeal that is the subject of this petition for certiorari, the Virginia Court of Appeals held that "the law of the case doctrine prevented it from deciding the enforcement issue even though the enforcement question was indisputably *not* part of the prior litigation because Janet specifically chose *not* to litigate the enforcement issue in prior litigation." Pet. at 7 (emphasis in original). The *Miller-Jenkins III* decision from which Petitioner appeals flatly rejected that argument, however, pointing out that Petitioner's initial July 2004 filing asked the Virginia courts "to find that the parental rights afforded to

[Janet] by the Vermont court were 'nugatory, void, illegal and *unenforceable*." App. 17a (emphasis supplied by court).

6. Petitioner asserts that "no court addressed Lisa's constitutional arguments" regarding the Vermont orders. (Pet. at 8.) In fact, the courts below have held her to have waived those arguments. App. 35a, 118a.

7. While *Miller-Jenkins III* was pending, the Vermont Court ordered that custody of IMJ be transferred from Miller to Jenkins on January 1, 2010. Miller did not appear for the custody transfer. Jenkins has been unable to contact Miller or IMJ since, and their whereabouts are unknown.[3]

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[3] If the Court so requests, counsel can produce a certified copy of the Vermont Court's December 22, 2009 Order, finding that "it was represented to the court that no one has had any contact with Lisa Miller or IMJ since the court's order of November 20th. Her attorneys have attempted to contact her, but she has not returned any messages. The present whereabouts of Lisa Miller and IMJ are unknown" and that "it appears that Ms. Miller has ceased contact with her attorneys and disappeared with the minor child who is the subject of the parental rights and responsibilities order."

REASONS FOR DENYING THE WRIT

I. BECAUSE THE DECISION BELOW RESTED ON AN INDEPENDENT AND ADEQUATE STATE PROCEDURAL GROUND, THE WRIT SHOULD BE DENIED.

As both the Virginia Supreme Court and Court of Appeals have held, Petitioner is bound by the decision of the Virginia Court of Appeals in *Miller-Jenkins I* that the PKPA, not DOMA, controls this dispute, and thus Virginia courts' only role in this litigation is to afford full faith and credit to orders of the Vermont Court. App. 19a, 35a. From 2004 to 2006, Petitioner argued that the PKPA effectively was trumped by the Defense of Marriage Act. *See* App. 66a-68a. In November 2006, the Virginia Court of Appeals emphatically rejected that argument: "Nothing in the wording or the legislative history of DOMA indicates that it was designed to affect the PKPA. . . . [T]he only question before us is whether, considering the PKPA, Virginia *can deny full faith and credit* to the orders of the Vermont court regarding IMJ's custody and visitation. *It cannot.*" App. 68a-69a (emphasis added).

Lisa "failed to perfect an appeal from that decision in the manner required by law," and the Court of Appeals decision became final. *Miller-Jenkins II*, App. 37a (Hassell, J., concurring); 30a. The Virginia courts consistently have refused to allow Petitioner to re-litigate the issue of the Virginia court's duty to afford full faith and credit to orders of the Vermont Court.

A. This Court Does Not Have Jurisdiction to Review Cases Decided by State Courts on State Grounds.

"This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds." *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945). Review is precluded "whether the state law ground is substantive or procedural." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). *Coleman* reflected this Court's longstanding respect for the right of each state court to "prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable when Federal rights are in controversy. . . ." *Wolfe v. North Carolina*, 364 U.S. 177, 195 (1960) (citing cases).

"In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional." *Coleman*, 501 U.S. at 729. The doctrine is based in the limitation of the Court's jurisdiction to cases and controversies: "We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." *Herb*, 324 U.S. at 126. That is precisely what would happen should this Court review the present case. Lisa's failure to appeal *Miller-Jenkins I* properly rendered that decision final. While this Court theoretically could determine

that *Miller-Jenkins I* was incorrectly decided, the law of the case ruling in *Miller-Jenkins II* holds that "[r]ight or wrong, it is binding on both the trial court and the appellate court, and is not subject to re-examination by either." App. 32a (citation omitted). Nothing this Court could say about the federal law would change the judgment of the Virginia courts from which Petitioner seeks review.

B. Law of the Case is an "Adequate and Independent State Ground."

This Court has held that a ruling in a final judgment deemed "law of the case" is an independent and adequate state ground precluding review. *Rio Grande Western Railway Co. v. Stringham*, 239 U.S. 44 (1915), illustrates the point. In the first appeal in that case, the state supreme court directed the trial court to enter a judgment awarding the plaintiff a right of way over disputed land. The trial court did so, but the plaintiff appealed again, insisting that it was entitled to a fee simple. 239 U.S. at 46. The state supreme court rejected this argument based on the law of the case doctrine because the plaintiff had failed to seek rehearing from that court's prior final judgment defining the extent of his property rights. *Id.* This Court refused to accept the case for review. "Manifestly the first judgment was final," in that it "disposed of the whole case on the merits, directed what judgment should be entered, and left nothing to the judicial discretion of the trial court." *Id.* at 47. "And as the question sought to be presented arises upon the first judgment . . ., it is apparent that the writ of error addressed to the second judgment presents nothing reviewable here." *Id.*

The present case is no different from *Rio Grande Railway*. As the Virginia courts have held, and as Petitioner's prior conduct in trying (but failing properly) to appeal *Miller-Jenkins I* and thereafter seeking certiorari regarding that ruling acknowledges, *Miller-Jenkins I* was a final judgment, and thus Petitioner's procedural default is binding and precludes this Court's review. *See* App. 32a.

The cases Petitioner cites are not to the contrary but merely provide that a litigant who suffers an adverse ruling that cannot be appealed to this Court can secure review of that ruling once the case is final and eligible for certiorari.[1] For example, *Washington ex rel Grays Harbor Logging Co. v. Coats-Fordney Logging Co.*, 243 U.S. 251 (1917), involved a condemnation action in which the defendant took an interlocutory appeal to the state supreme court to challenge the constitutionality of the state statute. The state supreme court upheld the statute, and remanded to the trial court for further proceedings. This Court refused to accept the case for review because the state court judgment was not final, but noted that "[w]hen the litigation in the state courts is brought to a conclusion, the case may be brought here upon the Federal questions already raised as well as any that may be raised hereafter."

[1] Other cases cited by Petitioner came to this Court from *federal* courts of appeal. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871 (1990); *Christianson v. Colt Indus.*, 486 U.S. 800 (1988); *Messinger v. Anderson*, 225 U.S. 436 (1912). Those cases obviously have no bearing on whether a ruling based on law of the case represents an adequate and independent *state* ground barring review from a *state* court judgment.

243 U.S. at 256-57. Similarly, in the other two cases cited in the Petition, the ruling claimed to be "law of the case" was contained in a non-final decision, specifically a decision by the state supreme court that remanded the case back for trial. *See Reece v. Georgia*, 350 U.S. 85 (1955); *Davis v. O'Hara*, 266 U.S. 314 (1924). Thus, for each of those rulings, review did not lie in this Court, there thus was no procedural default, and this Court logically decided that, "[b]ecause we cannot review a state court judgment until it is final, a contrary rule would insulate interlocutory state court rulings on important federal questions from our consideration." *Hathorn v. Lovorn*, 457 U.S. 255, 262 (1982). But this factor does not arise in cases, like *Rio Grande Railway* and the present case, in which a party attempts to re-litigate an adverse ruling that could have been appealed to this Court.

C. Lisa's Contention That the Virginia Supreme Court's Law of the Case Doctrine Is Not an Adequate State Ground Because It Is Not "Strictly or Regularly Followed" Is Without Merit.

Petitioner argues that the Virginia Supreme Court's ruling in *Miller-Jenkins II* was too novel to constitute an adequate state procedural ground, because the law of the case principle was not 'strictly or regularly followed.'" Pet. at 36, citing *Hathorn*, 457 U.S. at 263. But the law of the case doctrine was firmly established in the Virginia courts over a century before *Miller-Jenkins II*. *See Chappell v. White*, 36 S.E.2d 524, 527 (Va. 1946) ("The [law of

the case] doctrine has been applied in many cases by this court."); *Searles' Adm'r v. Gordon's Adm'r*, 157 S.E. 759, 761 (Va. 1931) ("The rule has found its way into every system of jurisprudence, not only from its obvious fitness and propriety, but because without it, an end could never be put to litigation."); *Norfolk & W. Ry. Co. v. Duke & Rudacille*, 60 S.E. 96, 97 (1908) (describing the doctrine as "well settled").

Nor is there anything novel about the way the doctrine was applied in this case. The Virginia Supreme Court explained that "[p]ursuant to the 'law of the case' doctrine, when a party fails to challenge a decision rendered by a court at one stage of litigation, that party is deemed to have waived her right to challenge that decision during later stages of the 'same *litigation*.'" App. 33a (emphasis added) (*quoting Kondaurov v. Kerdasha*, 629 S.E.2d 181, 188 (Va. 2006). Regarding Lisa's contention that the second appeal was not part of the same "case" as the first one, the court explained:

> Although Lisa and Janet separately filed the cases from which the two appeals arose, both cases involved these same parties and sought adjudication of the same issue, custody and visitation regarding IMJ. The two Virginia appeals were part of the "same litigation" seeking to resolve the single question which custody order, the Vermont custody order or the circuit court's order, would govern the parties' custody and visitation dispute.

App. 36a. *See* Va. Code § 20-146.26. Petitioner "has failed to substantiate any claim that the [Virginia] courts in general apply this [rule] in an irregular, arbitrary, or inconsistent manner." *See Jimmy Swaggart Ministries v. Board of Equalization of California*, 493 U.S. 378, 399 (1990).[5]

Petitioner also argues that enforcement was not an issue in *Miller-Jenkins I*, which is both factually incorrect and legally irrelevant. In June 2004, the Vermont Court issued an order for Respondent to have visitation with her child. As the *Miller-Jenkins III* decision below pointedly noted, a few weeks later came "the petition that led to the decision in *Miller-Jenkins I*, which appellant herself filed with the Frederick County court to start the Virginia litigation between these parties, specifically ask[ing] the court to find that the parental rights afforded to [Respondent] by the Vermont court were "'nugatory, void, illegal and/or *unenforceable*.'" App. 17a (emphasis supplied by court) (quoting *Miller-*

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[5] Even if the "law of the case" doctrine did not apply, Petitioner would still be bound by rulings in "separately captioned" prior cases by the well-established doctrine of res judicata. *See Flora, Flora & Montague, Inc. v. Saunders*, 367 S.E.2d 493, 495 (Va. 1998) (holding second case barred by res judicata; "A valid, personal judgment on the merits ... bars re-litigation of the same cause of action, or any part thereof which could have been litigated, between the same parties and their privies."); *see also Bill Greever Corp. v. Tazewell Nat. Bank*, 504 S.E.2d 854, 856-57 (Va. 1998); *see generally Steinman v. Clinchfield Coal Corp.*, 93 S.E. 684, 687(Va. 1917) (the law of the case doctrine is "[c]losely akin to the doctrine of res judicata" and "it is at times confused with" res judicata).

Jenkins I at App. 55a). The circuit court order on appeal in *Miller-Jenkins I* ruled that that Petitioner "solely has the legal rights, privileges, duties and obligations as parent hereby established for the health, safety, and welfare of IMJ, and [] that neither Janet 'nor any other person has any claims of parentage or visitation rights over'" their child. App. 52a-53a. In her appeal of that order, Respondent included in the Questions Presented "Did the Virginia Court err in refusing to enforce the June 17, 2004 custody order of the Vermont Court . . ." and included an entire argument section devoted to that issue. Respondent also asked the Court of Appeals four times in her Opening Brief to "remand with instructions . . . to enforce . . . [the] orders and decrees of the Vermont Court." The Court of Appeals recognized that, where another state is properly exercising jurisdiction, the PKPA limits a second state's role to enforcing the first state's orders. App. 70a. The Court of Appeals thus ordered the circuit court to afford full faith and credit to Vermont's orders. *Id.*

On appeal in *Miller-Jenkins II* was the decision that Virginia must register orders from Vermont. The Virginia Supreme Court rejected the same argument Petitioner tries again here, *viz.*, that *Miller-Jenkins I* does not address the affirmative obligations imposed on Virginia courts with respect to Vermont orders. App. 31a-32a. In mandating that Virginia must register Vermont orders, *Miller-Jenkins II*'s recognized that *Miller-Jenkins I*'s PKPA holding resolved not only the issue of Virginia's obligation under the PKPA to "not exercise

jurisdiction" in conflict with Vermont (App. 157a, 28 USC 1738A(g)) but also its obligation under the PKPA to "enforce according to its terms" orders from Vermont (App.152a, 28 USC 1738A(a)). The Virginia Supreme Court pointed out the fallacy of Lisa's contention that *Miller-Jenkins I* was limited solely to the issue of jurisdiction by pointing out that "Lisa's petition and brief filed in this Court contain the identical assignments of error that she presented in her petition to this Court in the first Virginia appeal," and concluded that "each of the issues Lisa raises in this appeal was addressed and resolved in the first Virginia appeal." App. 35a.

Moreover, under Virginia's "law of the case" doctrine, litigants are barred from raising arguments in subsequent proceedings, "whether actually adjudicated or not," *Norfolk & Western Railway Co.*, 60 S.E. at 97, that are necessarily inconsistent with prior legal rulings in the same litigation. Thus, even if Lisa were correct that *Miller-Jenkins I* decided only a jurisdictional question, that decision's mandate that Virginia court's give full faith and credit to Vermont orders precludes her from now denying Virginia's enforcement obligations.

It bears emphasis that Petitioner had a more than adequate chance to seek review of these issues before this Court. Had she simply filed a notice of appeal from the Court of Appeals decision in *Miller-Jenkins I*, the Virginia Supreme Court and this Court could have ruled on the application of the PKPA and DOMA to this case. Because she failed to do so, Virginia appropriately has invoked its rules to deny her a second bite at the apple by spuriously

attempting to re-litigate those issues. As the Virginia Supreme Court aptly observed many years ago: "Every litigant should have opportunity to present whatever grievance he may have to a court of competent jurisdiction; but having enjoyed that opportunity, and having failed to avail himself of it, he must accept the consequences. 'It is to the interest of the republic that there should be an end to controversy.'" *Searles' Adm'r*, 157 S.E. at 761.

II. PETITIONER'S ARGUMENT THAT CONGRESS CANNOT MANDATE ENFORCEMENT OF FOREIGN ORDERS IN THE PKPA IS PROCEDURALLY IMPROPER AND SUBSTANTIVELY FRIVOLOUS.

Petitioner has changed her argument about the operation of the PKPA and Full Faith and Credit Clause radically in a futile attempt to avoid the preclusive effect of her procedural default. She previously acknowledged that the PKPA mandates enforcement of sister state orders without regard to the forum's public policy, and argued that DOMA made an exception to that rule to permit the forum to disregard orders emanating from litigation involving marriages and civil unions entered by same-sex couples.[6] Now she argues that the Full Faith and

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[6] *See Miller-Jenkins v. Miller-Jenkins*, No. 2654-04-4,Br.of Resp't, Virginia Court of Appeals, Jan. 3, 2005, at 27 ("The PKPA clarifies that a custody or visitation order is encompassed within those judgments or acts that must be afforded full faith and credit, and that *a state cannot refuse to enforce the order, regardless of that state's public policy*, if the first state properly exercised jurisdiction; and DOMA further clarifies that no State

Credit Clause has no enforcement mandate, and indeed that Congress is constitutionally prohibited from requiring enforcement of orders from sister states. This change of position does not avail Petitioner: *Miller-Jenkins I*'s reversal of an order denying Respondent her visitation rights and its instruction to the lower courts to afford full and credit to Vermont orders is a ruling that is binding under the "law of the case" doctrine. It cannot be changed -- at least between these litigants –whatever creative argument Petitioner might assert. Petitioner's newly-invented argument is also demonstrably wrong, as demonstrated by numerous Full Faith and Credit Clause holdings of this Court and by every known holding interpreting the PKPA. There thus is no reason for this Court to grant certiorari.

A. Petitioner Cannot Avoid the Law of the Case Doctrine By Proffering a Different Argument Against *Miller-Jenkins I*'s Mandate to Afford Full Faith and Credit to Orders of the Vermont Court.

Petitioner cannot avoid the application of the "law of the case" doctrine simply by changing her argument about why full faith and credit should not be afforded orders from Vermont. The Virginia Supreme Court held that "the issues *actually decided* in the first Virginia appeal[] include[d] the issues whether the PKPA applied to the custody and

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will be required to give full faith and credit to rights created in another state by virtue of a same-sex union.") (emphasis added).

visitation dispute and *whether the Vermont custody order was entitled to full faith and credit.*" App. 35a (emphasis added). This is not surprising, given the parties' arguments in *Miller-Jenkins I* and the fact that the circuit court order under review specifically held Respondent to have no visitation rights in Virginia. App. 52a-53a. Virginia plainly does not allow one to escape the preclusive effect of a prior legal ruling by raising new arguments against the validity of that ruling. The decision in *Miller-Jenkins I* to reverse the circuit court's order denying respect for Respondent's visitation rights and remand with instructions to afford full faith and credit to Vermont orders is the law of the case, and Petitioner cannot challenge that ruling by changing her arguments. App. 35a.

B. Petitioner's Argument That Congress Lacks Constitutional Authority to Mandate Enforcement of Sister State Orders Is Frivolous.

The PKPA could not be more clear: a "State *shall enforce* according to its terms" any prior custody or visitation determination by another state made consistently with the act. 152a. Petitioner seeks to avoid this pellucid statutory language by arguing that "Congress lacks constitutional authority to mandate enforcement of foreign orders." Pet. at 22. Her modest proposal would eviscerate the Full Faith and Credit Clause, which this Court described as "a nationally unifying force . . . making each an integral part of a single nation, in which rights judicially established in any part are given nation-

wide application." *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 439 (1943).

Petitioner suggests that states discharge their Full Faith and Credit obligations by affording *res judicata* effect to a sister state's order even while emasculating the order by denying it enforcement. This Court's holdings belie this argument, as states have been required to enforce foreign judgments, not merely forbid re-litigation of them: In *Fauntleroy v. Lum*, 210 U.S 230, 237 (1908), Mr. Lum was not merely barred from relitigating his gambling debt; he had to pay Mr. Fauntleroy the amount of the judgment reflecting that debt that Mr. Fauntleroy had obtained in another state. And in *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 276-77 (1935), an Illinois court had to enforce the tax debt its hometown company owed as a result of a Wisconsin judgment, not merely preclude relitigation.

Petitioner fares no better in trying to limit the enforcement obligation by citing public policy concerns or the need to utilize the enforcement mechanisms of the forum. See Pet. at 18-21.[7] First,

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[7] This Court appears to have rejected older cases cited by Petitioner suggesting exceptions to the absolute mandate of enforcement in the Full Faith and Credit Clause. *Williams v. North Carolina*, 317 U.S. 287, 294 n.5 (1942), citing *Olmsted v. Olmsted*, 216 U.S. 386 (1910), *Fall v. Eastin*, 215 U.S. 1 (1909), and *Hood v. McGhee*, 237 U.S. 611 (1915). *See* Pet. at 18, 21. At a minimum, *Williams* held that any latitude those cases allowed a state in refusing to honor a sister state decree is limited to real estate under "the doctrine that the state where the land is located is 'sole mistress' of its rules of real property." 317 U.S. at 294 n.5.

there is no public policy exception to the Full Faith and Credit Clause's mandate to enforce judgments of sister states. *Baker v. General Motors*, 522 U.S. 222, 233 (1998). The Clause's "constitutional command requires a state to enforce a judgment of a sister state, . . . although the suit in which the judgment was obtained could not have been maintained under the laws and policy of the forum to which the judgment is brought." *Magnolia*, 320 U.S. at 439; *see also Milwaukee*, 296 U.S. at 276-77 ("The very purpose of the full-faith and credit clause was to alter the status of the several states as independent foreign sovereignties, *each free to ignore obligations created . . . by the judicial proceedings of the others*") (emphasis added). Enforcement of sister state judgments is required irrespective of any conflicting public policy of the forum. *Baker*, 522 U.S. at 233 ("Regarding judgments, however, the full faith and credit obligation is exacting. . . . our decisions support no roving 'public policy exception' to the full faith and credit due judgments."); *Coghill v. Boardwalk Regency Corp.*, 396 S.E.2d 838, 839 (Va. 1990) (Full Faith and Credit Clause mandated enforcement of a New Jersey judgment for money based on a gambling debt, even though "[t]he public policy of Virginia with respect to the legal enforcement of gambling debts could scarcely be more forcefully expressed.").[8]

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[8] Petitioner argues that the deference in federal law for state control of domestic relations militates against compelling respect for interstate decrees. See Pet. at 19. This Court has rejected that argument previously. In both *Williams*, and *Sherrer v. Sherrer*, 334 U.S. 343 (1948), this Court spoke

Petitioner also misconstrues language in *Baker* that, while full faith and credit must be given to another state's judgment, the "time, manner, and mechanisms" of enforcing judgments in the forum state may differ. 522 U.S. at 235. Here, no one is asking the courts in Virginia to use the Vermont procedures for enforcement; instead, Janet invoked Virginia's procedures for enforcement, including the parts of the enforcement chapter of Virginia's UCCJEA providing for registration of orders and the enforcement of registered orders. *See* Va. Code §§ 20-146.26, 146.27.

Petitioner is arguing that the Vermont orders cannot be enforced in Virginia because of a substantive disagreement with the rationale employed by Vermont in deciding to issue those orders, not because of some time, manner and mechanisms for enforcement of judgments. But the conclusion that procedural methods for enforcement do not travel with the judgment "surely does not permit a State to refuse to honor a sister state judgment based on the forum's choice of law or policy preferences." *Baker*, 522 U.S. at 239. Instead, enforcement of judgments must be "even-handed" and not differ based on the forum state's policy

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eloquently about the importance of state control of marriage and family law, yet each time noted that these cases by definition present the conflicting views of two states regarding domestic issues, and that the solution is the exacting adherence to the procedural approach of the Full Faith and Credit Clause rather than the "to weigh the relative merits of the policies of" the two states. *Id.* at 354; *see also Williams*, 317 U.S. at 302.

preferences. *Id.* at 235, 239.[9] Allowing Petitioner to attack the Vermont order's substantive validity under Virginia law would be the exact equivalent of NOT giving full faith and credit to the Vermont order itself.

The flaw in Petitioner's logic is encapsulated by the facile argument that "Virginia has no mechanism for enforcing custody determinations founded upon parental rights arising from a same-sex union." Pet. at 19.[10] The visitation order at issue in this appeal merely provides for dates, times, logistics, and expenses for visitation – like hundreds of sister state orders regarding parental rights that Virginia has enforced previously pursuant to a statutory procedure. *See* Va. Code Ann. § 20-146.27(B). Petitioner wants Virginia courts "to go behind judgments recovered in other states" to re-examine the substantive underpinnings that led the court to its decision – the exact approach deemed "void" in *Fauntleroy*, 210 U.S. at 236; *accord Coghill*,

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[9] Courts have cited the "even handed" enforcement language of *Baker* in holding that a forum state's law providing for recognition of adoptions and/or revised birth certificates for adoptive families must be available for out-of-state final adoption judgments that are contrary to the forum's public policy. *Finstuen v. Crutcher*, 496 F.3d 1139, 1154 (10th Cir. 2007); *Giancaspro v. Congleton*, No. 2070086, 2009 Mich. App. LEXIS 765, **5-6 (Mich. Ct. App. Feb. 19, 2009).

[10] Notably, the Virginia UCCJEA speaks only about registration and enforcement of the "child custody determination" and sets no qualifiers regarding who may seek to register or enforce such a determination. *See* Va. Code §§ 20-146.24-20-146.26; 20-146.27(A); 20-146.27(B).

396 S.E.2d at 840 ("We have only the foreign judgment before us, not the underlying [gambling] transaction on which it was based."); App.23a-24a ("It does not matter to us . . . why the Vermont judge made his decision. The essence of full faith and credit, and the policy behind the PKPA and UCCJEA, is that we do not look behind orders validly entered in another state to the basis of their decision."). Similarly, the PKPA mandates enforcement of a sister state's custody and visitation provisions and precludes reexamining the sister state's reasoning. App. 152a.

Petitioner's purported distinction between res judicata and enforcement becomes even more puzzling with her embrace of the Tenth Circuit's decision in *Finstuen v. Crutcher*, when that decision completely undermines her position. Petitioner argues that *Finstuen* merely struck down Oklahoma's non-recognition law, and that the case had nothing to do with enforcing the out-of-state adoption. Petition at 20.[11] But the *Finstuen* court

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[11] Petitioner's quote from *Finstuen* that "The Doels do not seek to enforce their adoption order" is incomplete and misleading. Petition at 20. The court actually stated "The Doels do not seek to enforce their adoption order against Dr. Crutcher in his official capacity for the state of Oklahoma as a matter of claim or issue preclusion" in response to the state department of health's argument – deemed "absurd[]" by the court – that the department was not bound by the foreign adoption order because its director was not a party to that proceeding. *Finstuen*, 496 F.3d at 1195. Indeed, this highlights the fallacy of Petitioner's argument that the Full Faith and Credit Clause is limited to *res judicata* effect, as a judgment holder in one state can invoke the enforcement mechanisms of a sister state irrespective of whether the sister state had any role in the first

also ordered the registrar to enforce the out-of-state adoption by issuing a new birth certificate for "Baby E" listing both of her adoptive mothers as parents. 496 F.3d at 1154-55. *Finstuen* held that Oklahoma, having voluntarily created an enforcement mechanism for adoptive parents to secure new birth certificates, could not pick and choose which adoptive parents could utilize that mechanism:

> If Oklahoma had no statute providing for the issuance of supplementary birth certificates for adopted children, the Doels could not invoke the Full Faith and Credit Clause in asking Oklahoma for a new birth certificate. However, Oklahoma has such a statute-*i.e.*, it already has the necessary "mechanism [ ] for enforcing [adoption] judgments." *See id.* [*Baker*, 522 U.S. at 235]. The Doels merely ask Oklahoma to apply its own law to "enforce" their adoption order in an "even-handed" manner. *See id.*

Finstuen, 496 F.3d at 1154. Similarly, Respondent seeks only to utilize Virginia's statutory procedure for registration and enforcement of foreign orders. Put another way, the Doels are adoptive parents, not same-sex adoptive parents; William Fauntleroy held a money judgment, not an illicit gambling debt; Janet Jenkins is, by court decree, a parent entitled to

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state's proceedings. *Id.*; *Fauntleroy*, 210 U.S. at 237; *Milwaukee*, 296 U.S. at 276-77.

visitation, not a former same-sex partner with no legal relationship to her child.

C. State Courts Have Adhered to the PKPA's Requirements With Remarkable Unanimity, Including Vermont and Virginia in this Litigation, Providing No Compelling Reason To Grant Certiorari.

Petitioner's argument that Congress lacked the power to mandate that states "enforce according to its terms and [] not modify" the custody orders of sister states is not only wrong but universally recognized as wrong. Petitioner concedes that there is no conflict in the law justifying this Court's review but seeks it because, according to Petitioner, this is an "important, recurring, question of federal law that needs to be settled." Pet. at 11 n.2. But the law is settled. In this litigation, the courts of both Vermont and Virginia refused to accept Petitioner's assertion that DOMA affects the applicability of the PKPA. App. 66a-68a, 96a. *Miller-Jenkins I*'s ruling that, in passing DOMA, Congress did not intend to allow states to undermine the PKPA's deterrents to child snatching and forum shopping, is consistent with the dozens of courts that have recognized that the PKPA preempts conflicting state law,[2] and specifically the

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[2] *See, e.g.*, *Meade v. Meade*, 812 F.2d 1473, 1476 (4th Cir. 1987); *Esser v. Roach*, 829 F. Supp. 171, 176 (E.D. Va. 1993); *Martinez v. Reed*, 623 F. Supp. 1050, 1054 (E.D. La. 1985), *aff'd without opinion by* 783 F.2d 1061 (5th Cir. 1986); *Ex parte Blanton*, 463 So.2d 162, 164 (Ala. 1985); *Rogers v. Rogers*, 907 P.2d 469, 471 (Alaska 1995); *Atkins v. Atkins*, 823 S.W.2d 816, 819 (Ark. 1992); *In re Marriage of Pedowitz*, 179 Cal. App. 3d

state supreme courts that have followed the PKPA in respecting the decrees of sister states in conflict with their own public policy. *Perez v. Tanner*, 965 S.W.2d 90, 94-95 (Ark. 1998); *In re Clausen*, 502 N.W.2d 649, 657 (Mich. 1993). This is not a case in which state courts of last resort have reached conflicting decisions on an important federal question, as contemplated by Sup. Ct. R. 10(b).[13]

992, 999, 225 Cal. Rptr. 186, 189 (1986); *In re B.B.R.*, 566 A.2d 1032, 1036 n. 10 (D.C. App. 1989); *Yurgel v. Yurgel*, 572 So. 2d 1327, 1329 (Fla. 1990); *In re Marriage of Leyda*, 398 N.W.2d 815, 819 (Iowa 1987); *Wachter v. Wachter*, 439 So. 2d 1260, 1265 (La. App. 1983); *Guardianship of Gabriel W.*, 666 A.2d 505, 508 (Me. 1995); *Delk v. Gonzalez*, 658 N.E.2d 681, 684 (Mass. 1995); *In re Clausen*, 502 N.W.2d 649, 657 n. 23 (Mich. 1993); *Glanzner v. State, DSS*, 835 S.W.2d 386, 392 (Mo. App. 1992); *Ganz v. Rust*, 690 A.2d 1113, 1118 n. 5 (N.J. Super. Ct. App. Div. 1997); *Tufares v. Wright*, 644 P.2d 522, 524 (N.M. 1982); *Leslie L. F. v. Constance F.*, 110 Misc. 2d 86, 441 N.Y.S.2d 911, 913 (Fam. Ct. 1981); *Dahlen v. Dahlen*, 393 N.W.2d 765, 767 (N.D. 1986); *Holm v. Smilowitz*, 615 N.E.2d 1047, 1053-54 (Ohio 1992); *In re of Henry*, 951 P.2d 135, 138 (Or. 1997); *Barndt v. Barndt*, 580 A.2d 320, 334 (Pa. Super. 1990); *Marks v. Marks*, 315 S.E.2d 158, 160 (S.C. Ct. App. 1984); *Brown v. Brown*, 847 S.W.2d 496, 499 (Tenn. 1993); *In re S.A.V.*, 837 S.W.2d 80, 87-88 (Tex. 1992); *State ex rel. D.S.K.*, 792 P.2d 118, 128 (Utah App. 1990); *State v. Carver*, 781 P.2d 1308, 1316 (Wash. 1990); *Arbogast v. Arbogast*, 327 S.E.2d 675, 679 (W. Va. 1984); *Michalik v. Michalik*, 494 N.W.2d 391, 394 (Wis. 1993); *State ex rel. Griffin v. District Court*, 831 P.2d 233, 237 n.6 (Wyo. 1992).

[13] Petitioner contends that whether a state must enforce a foreign custody order arising from a same-sex union or enforce a "patently unconstitutional" custody order is "unsettled and lower courts have reached conflicting results about them." Petition at 2. No citation is provided, and Respondent knows of no conflict. Petitioner later states that "In the past few years, Florida, Texas, Alabama, Virginia, Louisiana, and Oklahoma

Consequently, having failed to present any compelling reason for a writ of certiorari to be granted, the Petition should be denied.

III. PETITIONER'S DUE PROCESS AND EQUAL PROTECTION ARGUMENTS ARE MERITLESS, AND HER DUE PROCESS ARGUMENTS HAVE BEEN WAIVED.

Petitioner's last ditch effort is to argue that Virginia should make its own assessment of the fairness and substantive validity of Vermont's orders and decline enforcement. (Pet. at 27-37.) The PKPA does not permit such second-guessing of Vermont's rulings, nor does it allow an attack on the procedure employed, where, as here, jurisdiction and notice are not questions. Finally, the fact that enforcement of Vermont's orders may result in Petitioner being treated differently than other Virginia parents is the normal consequence of application of the PKPA and

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have been asked to decide whether they will recognize or enforce foreign orders arising out of custody or adoption proceedings between same-sex couples." Again, no citation is provided, although Respondent is aware of the following appellate cases involving custody or adoption and same-sex couples, *all of which mandated enforcement of the foreign order*, *Finstuen*, 496 F.3d at 1154 (Oklahoma); *Prashad v. Copeland*, 685 S.E.2d 199, 208 (Va. Ct. App. 2009); *Embry v. Ryan*, 11 So. 3d 408 (Fla. Ct. App. 2009); *A.K. v. N.B.*, No. 2070086, 2008 Ala. Civ. App. LEXIS 316 (Ala. Civ. App. May 23, 2008), *vacated*, *Ex parte N.B.*, No. 1080440, 2010 Ala. LEXIS 111 (Ala. June 30, 2010).

of the Full Faith and Credit Clause and presents no equal protection concern.

A. Petitioner's Substantive Due Process Argument Is Meritless And Has Been Waived.

Lisa complains that the Vermont courts ignored her constitutional rights as a parent in determining that Janet is a parent and is entitled to visitation. Both the Supreme Courts of Vermont and Virginia have held this argument to be waived. In its first decision in this litigation, reviewing the order declaring Respondent's parentage and entitlement to visitation, the Vermont Supreme Court held that Petitioner's argument concerning "her exclusive constitutional right to parent her child . . . was not adequately raised below and has been waived." App. 118a. Petitioner challenged that ruling in her petition for certiorari, which was denied. 550 U.S. 918 (2007). It is not the proper function of the Virginia courts to second-guess the Vermont Supreme Court's application of its waiver rules. *See Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 710 (1982). Even if a collateral attack were possible, Petitioner waived the argument in Virginia; the Virginia Supreme Court specifically held that Petitioner waived her fundamental parental rights argument by failing to properly appeal the Virginia Court of Appeals' decision. App. 31a, 35a.

Moreover, it would be improper for the courts of Virginia to declare Vermont's actions unconstitutional. Petitioner's sole case holding that

a court can conduct an independent substantive due process review of a sister's state judgment is hardly compelling authority. In *In re BWS*, 371 N.W.2d 379 (Wis. Ct. App. 1985), the Wisconsin Court of Appeals held that a Michigan judgment for child support was invalid and would not be enforced because it was based on a statute that discriminated unconstitutionally against out-of-wedlock children. *Id.* at 380-81. The Wisconsin Supreme Court affirmed on entirely different grounds, and declined to consider the constitutionality of the Michigan statute, or "whether our court of appeals has jurisdiction to consider the constitutionality of a foreign statute." *In re Paternity of BWS*, 388 N.W.2d 615, 621 (1986).

Because Virginia could not revisit the constitutionality of Vermont's parentage determination, the only conflict of law among the states that Petitioner does articulate is irrelevant. She cites "at least sixteen states" that also grant custodial rights to nonbiological parents and "at least a dozen" that do not, including Virginia. Petition at 12-14. But the Virginia Court of Appeals recognized that, irrespective of whether Virginia would reach a different result in a similar case properly before its courts, Virginia had to respect Vermont's orders. App. 70a. This calculus is not altered by Lisa's characterization of the Vermont orders as "patently unconstitutional" – a facetious label, given that, by Lisa's own calculations, Vermont is in the plurality of states that would hold that her constitutional rights are not infringed by a court's preserving the parent-

child relationship between Isabella and Janet that Lisa helped create and actively fostered.[14]

B. Petitioner's Procedural Due Process Argument Is Meritless And Has Been Waived.

Additionally, Petitioner attacks the statutory construction analysis of the Vermont Supreme Court, and claims that that court unfairly applied what Petitioner claims was a new interpretation of Vermont parentage law to the dispute between Petitioner and Respondent. *See* Pet. at 28-29. Again, this argument is among the many that the Virginia Supreme Court held was barred because Petitioner failed to properly appeal it after raising it in *Miller-Jenkins I*. *Miller-Jenkins II*, App. 35a. The argument also fails on the merits because, to qualify for interstate respect, "state proceedings need do no

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[14] Notably, this Court denied certiorari in at least a half-dozen of these purportedly patently unconstitutional rulings. *Robinson v. Ford-Robinson*, 208 S.W.3d 140 (Ark. 2005), *cert. denied*, 546 U.S. 936 (2005); *In re E.L.M.C.*, 100 P.3d 546 (Colo. Ct. App. 2004), *cert. denied sub nom. Clark v. McLeod*, 545 U.S. 1111 (2005); *E.N.O. v. L.M.M.*, 711 N.E.2d 886 (Mass. 1999), *cert. denied*, 528 U.S. 1005 (1999); *In re Parentage of L.B.*, 122 P.3d 161 (Wash. 2005), *cert denied sub nom. Britain v. Carvin*, 547 U.S. 1143 (2006); *In re Custody of H.S.H.-K.*, 533 N.W.2d 429 (Wis. 1995), *cert. denied sub nom. Knott v. Holtzman*, 516 U.S. 975 (1995). Indeed, *V.C. v. M.J.B.*, 748 A.2d 539 (N.J. 2000), *cert. denied*, 531 U.S. 926 (2000), was decided two months before *Troxel v. Granville*, 530 U.S. 57 (2000), on which Petitioner so heavily relies, but this Court denied certiorari four months after *Troxel* and did not remand to the New Jersey Supreme Court to reevaluate its holding in light of *Troxel*.

more than satisfy the minimum procedural requirements of the Fourteenth Amendment's Due Process Clause in order to qualify for the full faith and credit guaranteed by federal law," specifically "a full and fair opportunity to litigate." *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461 481 (1982). Here, Petitioner herself invoked the jurisdiction of the Vermont courts and participated fully in all proceedings. Petitioner cites no authority holding that a state can conduct an independent review of a sister state's proceedings leading to judgment for compliance with procedural due process beyond ensuring jurisdiction and notice to the parties.

Moreover, the Vermont Supreme Court's application of its statutory interpretation to Petitioner is not a due process violation; it is the essence of the judicial function. ""The principle that statutes operate only prospectively, while judicial decisions operate retrospectively, is familiar to every law student,' [citation]. . . . A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction." *Rivers v. Roadway Express*, 511 U.S. 298, 311-13 (1994).

C. Petitioner's Equal Protection Claim Is Meritless.

Petitioner's final "constitutional argument" that she is denied equal protection because she is treated differently from other biological mothers in Virginia is untenable, because a litigant in a foreign jurisdiction is not similarly situated to others in the forum jurisdiction because of courts' obligation to

enforce orders of other states. *See In re Gibson*, 573 N.E.2d 1074, 1077 (Ohio 1991) ("Although Gilbert may be treated differently than some of those grandparents seeking the enforcement of out-of-state visitation decrees, we find no denial of equal protection. Grandparents who have obtained an out-of-state decree are not similarly situated to Gilbert. Unlike Gilbert, they have obtained a judgment that is generally entitled to full faith and credit in the absence of changed circumstances."); *Carter v. Carter*, 349 S.E.2d 95, 98 (Va. 1986) (as "domestic judgment creditors and foreign judgment creditors . . . are not similarly situated, statutory provisions treating them differently may not be successfully challenged under the Equal Protection Clause."). An equal protection challenge would fail for the additional reason that any disparate treatment is justified by the interest Congress and the states have in preventing child-snatching and forum shopping. *Gibson*, 573 N.E.2d at 1077 ("[I]n adopting the UCCJA, Ohio has reasonably determined that such judgments should be enforced to discourage the shuttling of children from state to state for the purpose of forum shopping. [citation] Under these circumstances, Gilbert has not been denied equal protection of the laws."); *Paton v. Brill*, 663 N.E.2d 421, 425 (Ohio Ct. App. 1995) (rejecting challenge to federal statute requiring enforcement of child support orders from sister states and explaining that "[t]he distinctions which result from the operation of the statute are reasonable and are directly related to the furtherance of solving a critical national problem: the failure of a significant number of parents to

fulfill their responsibilities to support their children.").

IV. BECAUSE PETITIONER IS A FUGITIVE HOLDING HERSELF AND THE PARTIES' CHILD AWAY FROM THE AUTHORITIES, THIS COURT SHOULD NOT GRANT THE WRIT.

Certiorari also is improper because Petitioner has secreted herself and the parties' child from law enforcement, preventing enforcement of any orders this Court might enter. "It has been settled for well over a century that an appellate court may dismiss the appeal of a defendant who is a fugitive from justice during the pendency of his appeal." *Ortega-Rodriguez v. United States*, 507 U.S. 234, 239 (1993). Indeed, for over 130 years, this Court has consistently refused to adjudicate appeals brought by litigants whose voluntary escape from the judiciary's control prevented assurance that orders would be followed. *Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970); *Eisler v. United States*, 338 U.S. 189, 190 (1949); *Bohanan v. Nebraska*, 125 U.S. 692 (1887); *Smith v. United States*, 94 U.S. 97, 97 (1876). While this Court seemingly has not had occasion to apply the doctrine in the case of a litigant's secreting children from the authorities, many state courts have.[15]

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[15] In several cases, state courts have dismissed the appeal of a parent secreting a child or ordered the appeal dismissed if the parent did not deliver child within a specified period. *See In re Marriage of Marks*, 420 N.E.2d 1184, 1187 (Ill. App. 1981); *Strange v. Strange*, 464 S.W.2d 216, 219 (Tex. Civ. App. 1970);

This Court, in its first fugitive disentitlement case, decried the petitioner's "heads I win, tails you lose" approach in words equally applicable to Petitioner: "If we affirm the judgment, he is not likely to appear to submit to his sentence. If we reverse it and order a new trial, he will appear or not, as he may consider most for his interest." *Smith*, 94 U.S. at 97. Many lower courts have echoed this concern in applying the fugitive disentitlement doctrine when parents have kept children from the court's reach. *Moscona v. Shenhar*, 649 S.E.2d 191, 199 (Va. Ct. App. 2007) ("unfair[]" to hear appeal of litigant whose contempt "demonstrates his view that compliance with any orders unfavorable to him is optional."), *aff'd sub nom. Sasson v. Shenhar*, 667 S.E.2d 555 (Va. 2008); *see also Pesin v. Rodriguez*, 244 F.3d 1250, 1253 (11th Cir. 2001) (same, where appellant's "behavior to date leaves little doubt that she would defy an adverse ruling."); *Scelba v. Scelba*, 535 S.E.2d 668, 673 (S.C. Ct. App. 2000) (same where litigant showed she would not "cooperate with any order she does not fancy"); *Hemenway v. Hemenway*, 339 A.2d 247, 250 (R.I. 1975) (same where litigant showed that "if you decide in my favor, well and good, but, if you do not, I will keep the children out of your reach."). Because Petitioner's actions have rendered it impossible for

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Michael v. Michael, 253 N.E.2d 261, 263 (Ind. 1969); *Jackson v. Jackson*, 221 So. 2d 114, 115 (Ala 1969); *In re Morrell*, 189 N.E.2d 873, 874 (Ohio 1963); *Commonwealth v. Beemer*, 188 A.2d 475, 477 (Pa. Super. 1962); *Henderson v. Henderson*, 107 N.E.2d 773, 774 (Mass. 1952); *In re Dillon*, 103 N.Y.S.2d 261, 262 (App. Div. 1951); *Pike v. Pike*, 167 P.2d 401, 404 (Wash. 1946); *Knoob v. Knoob*, 218 P. 568, 569 (Cal. 1923).

this Court to assume that any order it issues could be enforced, certiorari should be denied.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Petition for a Writ of Certiorari be denied.

Respectfully Submitted,

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